

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

NANCY ALICE JONES, Individually
and as the personal representative of the
Estate of David Allen Jones and SCOTT
ALBERT JONES,

Plaintiffs,

vs.

FRANCIS JOHN NABER,

Defendant.

No. 18-cv-1021-MAR

FINAL JURY INSTRUCTIONS

INSTRUCTION NO. 1

Statement of the Case. Members of the Jury:

This is a civil case brought by Plaintiffs, Nancy Jones, individually and as the Personal Representative of the Estate of David Allen Jones, and Scott Albert Jones, individually, against Francis John Naber.

On the morning of October 5, 2017, David Jones was operating a 2006 Harley Davidson FLHXI Street Glide motorcycle and was travelling southbound on Highway 136 in Dubuque County, Iowa, near Dyersville, Iowa. At that same time and place, Defendant Francis Naber was operating a John Deere Tractor 2555 with an attached manure spreader and was travelling southbound along Highway 136.

The Plaintiffs, Estate of David Allen Jones, Nancy Jones and Scott Albert Jones each claim that the Defendant, Francis Naber, was negligent and that his negligence was a cause of the accident and of the resulting damages.

The Defendant, Francis Naber, denies that he was negligent. He also claims that David Allen Jones was, himself, negligent and that his negligence was a cause of the damage claimed. Defendant also disputes the amount of damages claimed.

The Estate of David Jones seeks recovery for loss of spousal consortium for Nancy Jones and loss of parental consortium for Scott Jones. Plaintiff Nancy Jones, as personal representative of the Estate of David Allen Jones, also seeks recovery for David Jones' pre-death loss of function of mind and body.

Do not consider this summary as proof of any claim. Decide facts from the evidence and apply the law which I will now give you.

INSTRUCTION NO. 2

Duties of Judge and Jury, Instructions as a Whole. My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO. 3

Burden Of Proof, Preponderance Of Evidence. Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 4

Evidence. You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the Court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial.

The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the Court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 5

Deposition Testimony. Certain Testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 6

Interrogatories. During this trial, you have heard the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION NO. 7

Credibility of Witnesses. You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 8

Hypothetical Question, Expert Testimony. An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

INSTRUCTION NO. 9

Opinion Evidence, Expert Witness. You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 10

Statements By A Party Opponent. You have heard evidence claiming Defendant Francis Naber made statements before this trial while under oath and while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if Defendant Francis Naber had made it under oath during the trial.

If you find such a statement was made and was inconsistent with Defendant Francis Naber's testimony during the trial you may also use the statement as a basis for disregarding all or any part of Defendant Francis Naber's testimony during the trial but you are not required to do so. You should not disregard Defendant Francis Naber's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 11

Fault. In these instructions I will be using the term “fault.” Fault means one or more acts or omissions towards the person or property of the actor or of another which constitutes negligence.

INSTRUCTION NO. 12

Ordinary Care – Common Law Negligence – Defined. “Negligence” means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. “Negligence” is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

INSTRUCTION NO. 13

Comparative Fault. Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of Defendant Francis Naber and David Jones and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

INSTRUCTION NO. 14

Comparative Fault - Effects Of Verdict. After you have compared the conduct of all parties, if you find David Jones was at fault and David Jones' fault was more than 50% of the total fault, Plaintiffs cannot recover damages.

However, if you find David Jones' fault was 50% or less of the total fault, then I will reduce the total damages of Plaintiffs by the percentage of David Jones' fault.

INSTRUCTION NO. 15

Comparative Fault - Essentials For Recovery – Plaintiffs’ Claims. In order to recover on their claims, Plaintiffs must prove all of the following three propositions by the greater weight or preponderance of the evidence:

1. Defendant was at fault. In order to prove fault, Plaintiffs must prove that

Defendant was at fault in one or more of the following particulars:

- A. Failing to maintain a proper lookout before and during the turn;
 - B. Turning his vehicle from a direct course upon the highway before movement could be made with reasonable safety;
 - C. Failing to give an appropriate signal before and while making the turn;
 - D. Stopping without first giving an appropriate signal to the driver of any vehicle to the rear when there is an opportunity to give the signal;
 - E. Starting a stopped vehicle when movement could not be made with reasonable safety;
 - F. Failing to have a reflective slow-moving vehicle (SMV) sign attached to the rear of the manure spreader;
 - G. Failing to maintain control of his vehicle; and
 - H. Failing to immediately stop following an accident involving personal injury or death, remain at the scene and render reasonable assistance to David Jones.
2. Defendant’s fault was a cause of Plaintiffs’ damage.
3. The amount of damage.

If Plaintiffs have failed to prove any of these propositions, Plaintiffs are not entitled to damages. If Plaintiffs have proved all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. 13, 14, and 15.

INSTRUCTION NO. 16

Lookout. “Proper lookout” is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of the operation of the driver’s vehicle in relation to what the driver saw or should have seen. A driver need not keep a lookout to the rear all the time, but must be aware of the presence of others when the driver’s actions may be dangerous to others.

A violation of this duty is negligence.

INSTRUCTION NO. 17

Turning From A Direct Course. A driver shall not turn a vehicle from a direct course on a highway unless and until the movement can be made with reasonable safety.

A violation of this law is negligence.

INSTRUCTION NO. 18

When Signal Required - Continuous - Methods Of Giving. A driver shall not turn a vehicle from a direct course on a road unless and until the movement can be made with reasonable safety and after giving an appropriate signal if any other vehicle may be affected by the movement. The signal to left must be continuously given during at least the last 300 feet travelled by the vehicle before turning. The signal may be given by hand or by a mechanical or electrical turn signal.

A violation of this law is negligence.

INSTRUCTION NO. 19

Stopped Vehicle. The driver of a stopped vehicle shall not start the vehicle unless its movement can be made with reasonable safety.

A violation of this law is negligence.

INSTRUCTION NO. 20

Stopping. A driver shall not stop a vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear when there is an opportunity to give the signal. The signal should be given by extending the hand and arm downward from the left side of the vehicle or by brake light constructed and located on the vehicle as to give a signal of intention to stop.

A violation of this law is negligence.

INSTRUCTION NO. 21

Tractor Mirror. A farm tractor operated on a highway shall be equipped with a rearview mirror that reflects to the operator a view of the highway for a distance of at least 200 feet to the rear of the vehicle(s). The rearview mirror equipment standard may be met by the use and installation of a temporary rearview mirror.

INSTRUCTION NO. 22

Tractor Turn Signal. A farm tractor or implement towed by a farm tractor and operated on a highway shall be equipped with a turn-signal device that operates in conjunction with or separately from the rear taillight. The signal shall be plainly visible and understandable from a distance of 100 feet to the rear.

INSTRUCTION NO. 23

Slow Moving Farm Vehicles. Every farm tractor and implement being pulled by a farm tractor, operated on a highway at a speed of 35 miles per hour or less shall be identified with a slow moving vehicle (SMV) emblem, which consists of a fluorescent, red-orange equilateral triangle with a red retro-reflective border that is either centered or as near to the left of center of the vehicle/implement as practical so that it is clearly visible from the rear and is mounted two to ten feet above the pavement.

A violation of this law is negligence.

INSTRUCTION NO. 24

Control - Common Law. A driver must have his or her vehicle under control.

It is under control when the driver can guide and direct its movement, control its speed and stop it reasonably fast.

A violation of this duty is negligence.

INSTRUCTION NO. 25

Right Of Assumption. Both drivers had a right to use the road, but each had to respect the rights of the other. Each driver could assume the other would obey the law until they knew, or in the exercise of ordinary care, should have known the other driver was not going to obey the law.

INSTRUCTION NO. 26

Stopping at Accident Scene. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close as possible. Every such stop shall be made without obstructing traffic more than is necessary. The driver shall remain at the scene and render reasonable assistance.

A violation of this duty is negligence.

INSTRUCTION NO. 27

Comparative Fault – Defendant’s Claims. The Defendant claims that David Jones was at fault in the following particular: negligence.

This ground of fault has been explained to you in other instructions.

The Defendant must prove both of the following propositions:

1. The Plaintiff was at fault. In order to prove fault, the Defendant must prove David Jones was negligent in one or more of the following particulars.

- A. Failure to keep a proper lookout.
- B. Failure to maintain control.
- C. Passing at an unsafe distance.

2. The Plaintiff’s fault was a cause of the Plaintiff’s damage.

If the Defendant has failed to prove either of these propositions, the Defendant has not proved his defense. If the Defendant has proved both of these propositions, then you will assign a percentage of fault against the Plaintiff and include the Plaintiff’s fault in the total percentage of fault found by you answering the special verdicts.

INSTRUCTION NO. 28

Overtaking A Vehicle. The driver of a vehicle overtaking another vehicle going in the same direction shall pass to the left at a safe distance and shall not drive to the right side of the road until safely clear of the overtaken vehicle.

Duty of the Overtaken Vehicle. The driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of the overtaken vehicle until completely passed by the overtaking vehicle.

A violation of this law is negligence.

INSTRUCTION NO. 29

Cause – Defined. The conduct of a party is a cause of damage when damage would not have happened except for the conduct.

INSTRUCTION NO. 30

Elements of Plaintiffs' Damages – If you find Plaintiffs are is entitled to recover damages, you shall consider the following items:

1. Pre-Death Loss Of Full Mind And Body. Loss of function of the mind and body of David Jones from the time of injury to the time of death.
2. “Spousal Consortium.” The present value of post-death loss of spousal consortium that David Jones would have performed for his spouse, Nancy Jones, but for his injuries and death.

“Spousal consortium” is the fellowship of a husband and wife and the right of each to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse’s death.

Damages for loss of spousal consortium are limited in time to the shorter of the spouse’s or decedent’s normal life expectancy.

3. “Parental Consortium.” The present value of the services which David Jones would have performed for his child, Scott Jones, but for his death. This is also known as loss of parental consortium. “Parental consortium” is the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection and aid of the parent in every parental relationship, general usefulness, industry,

and attention within the family. It does not include the loss of financial support from the injured parent, nor mental anguish caused by the parent's death.

Damages for loss of parental consortium are limited in time to the shorter of the child's or decedent's normal life expectancy.

A child is not entitled to damages for loss of parental consortium unless the parent's death has caused a significant disruption or diminution of the parent-child relationship.

The amount you assess for pre-death loss of full mind and body, and loss of spousal and parental consortium cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the Defendant as proved by the evidence. A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 31

In determining the present value of the loss of spousal and parental consortium as a result of the death of David Jones, as provided in items 2 and 3 of Instruction No. 30, you may consider:

1. The circumstances of his life.
2. His age at the time of his death.
3. His health, strength, character, life expectancy.
4. His capacities, abilities and efficiencies in performing duties as a spouse and parent.
5. His skills and abilities in providing instruction, guidance, advice and assistance to the spouse and child.
6. The spouse's and child's respective needs.
7. All other facts and circumstances bearing on the present value of services.

INSTRUCTION NO. 32

Definition of Present Value. Future damages must be reduced to present value.

“Present value” is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate Plaintiffs for future losses.

INSTRUCTION NO. 33

Mortality Tables - Personal Injury. A Standard Mortality Table indicates the normal life expectancy of people who are the same age as David Jones, who was 60 years old at the time of his death, to be age 82.3 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about David Jones's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 34

Quotient Verdict. In arriving at an item of damage or any percentage of fault, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

INSTRUCTION NO. 35

Insurance. Whether any party to this case had any type of insurance has nothing whatsoever to do with the issues to be decided by the jury and insurance is a matter that you cannot consider.

INSTRUCTION NO. 36

General Instructions to Jury. Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 37

Return of Verdict - Forms of Verdict. I am giving you 1 verdict form and questions. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock ____ .m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict and questions must be signed by all seven jurors who agree.

When you have agreed upon the verdict and answers to questions and appropriately signed it, tell the Court Attendant.

**IN THE UNITED STATES DISTRICT COURT
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NANCY ALICE JONES, Individually
and as the Personal Representative of
the ESTATE OF DAVID ALLEN
JONES, and SCOTT ALBERT JONES,
Individually,

Plaintiffs,

vs.

FRANCIS JOHN NABER,

Defendant.

NO. 18-CV-1021-MAR

SPECIAL VERDICT FORM

We find the following verdict on the questions submitted to us:

QUESTION NO. 1: Was Defendant Francis John Naber at fault?

Answer “yes” or “no.”

ANSWER: _____

If your answer is “no,” do not answer Question No. 2.

QUESTION NO. 2: Was the fault of Defendant Francis John Naber a cause of any item of damage to Plaintiffs?

Answer “yes” or “no.”

ANSWER: _____

If your answer to either Question No. 1 or Question No. 2 is “no,” then you shall not assign any fault to Defendant Francis John Naber. If your answer to either Question No. 1 or Question No. 2 is “no,” then you shall not answer any further questions.

QUESTION NO. 3: Was David Allen Jones at fault?

Answer “yes” or “no.”

ANSWER: _____

If your answer is “no,” do not answer Question No. 4.

QUESTION NO. 4: Was the fault of David Allen Jones a cause of any item of damage to Plaintiffs?

Answer “yes” or “no.”

ANSWER: _____

If your answer to either Question No. 3 or Question No. 4 is “no,” then you shall not assign any fault to David Allen Jones.

QUESTION NO. 5: What percentage of the total fault do you attribute to Defendant Francis John Naber and to David Allen Jones? The percentages must total 100%.

ANSWER:

Defendant Francis John Naber _____%

David Allen Jones %

Total = 100%

If you find David Allen Jones to be more than 50% at fault, do not answer Question No. 6.

QUESTION NO. 6: State the amount of damages sustained by Plaintiffs for each of the following items of damage. Do not take into consideration any reduction of damages due to David Jones' fault. If Plaintiffs have failed to prove any item of damage, or have failed to prove that any item was caused by Defendant Francis John Naber's fault, enter "0" for that item.

1. Pre-death loss of function of mind and body of David Jones: _____
 2. The present value of loss of consortium of Nancy Jones: _____
 3. The present value of loss of consortium of Scott Jones: _____
- TOTAL: _____

Dated: _____

FOREPERSON*

* To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing to it after six hours or more of deliberation.